



United States Mission to the OSCE

Response to the Representative on Freedom of the Media, Freimunt Duve

Delivered by Deputy Representative Douglas A. Davidson
to the Permanent Council, Vienna
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Thank you, Mr. Chairman.

Let me begin this morning with the first two issues in Mr. Duve's report, for they are in our view related. It is, I think, commonly accepted that the press, like any other sector of society, is subject to the rules of and the trends in the market economy. We agree that an undue concentration of ownership of the media is potentially dangerous to the free flow of information. But with the emergence of new market economies and the rapid changes in technology, mergers and buy-outs in the world of the media may become inevitable. We look forward, with some interest, to the results of Mr. Duve's study on media concentration and foreign ownership in the eight states that his office has selected.

Turning to Mr. Duve's plan to host a roundtable on criminal libel and insult laws, let me just say that in my country, freedom of the press is constitutionally guaranteed, as enshrined in the forty-five words of the First Amendment of our Constitution, which over the years has been interpreted many times by our Supreme Court to provide the press with ever-greater immunity from libel suits by public figures. The Court has consistently ruled that "vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials" are a protected form of free speech. The Court has also ruled that a public official may not recover damages for defamatory falsehood related to his or her official conduct unless he or she proves that the statement was made with "actual malice" - that is, with foreknowledge that it was false or that it was made with a reckless disregard for the truth.

We are thus very disappointed to note that, recently, independent newspapers in both Kazakhstan and Kyrgyzstan were shut down on the basis of lawsuits filed by government officials seeking damages for having their "dignity insulted."

Mr. Chairman, as I noted a moment ago, new technologies are rapidly changing the mass media. Today, for instance, the Internet is creating a market place of ideas. Although it depends heavily on the printed word, the Internet is

fundamentally different from the traditional print media. If the traditional media can be said to rely on the "one-to-many" model, where information is distributed from one source to many recipients, the Internet has introduced a "many-to-many" model where the "filtering" function of editors is no longer needed. As every voice can now be heard, the Internet, at its best, creates a town hall meeting-like exchange of information and ideas.

Yet at the same time, there are intrinsic dangers in this new medium. Many websites are infested with hate speech and misinformation, and the Internet always risks misuse by criminals and terrorists. For these reasons, many states fear it. And all governments constantly grapple with its potential perils. This medium, too, can be said to be natural for a multilingual society, as Mr. Duve pointed out, and thus an essential element of any multicultural democratic society. In our own state of California, which presents a true kaleidoscope of ethnicities, a 2002 study showed that 84 percent of three major ethnic groups living in that state received information from non-traditional media sources such as, of course, the Internet. Thus, the key question remains: will we assume the responsibility for maintaining the advantages the Internet offers or will we succumb too easily to the fear of a "loss of control." It is, it seems to us, a choice between the heady promise of democracy and the stifling certitude of censorship.

Finally, Mr. Chairman, I should like to emphasize that all OSCE participating States freely and willingly committed themselves to protecting the freedom of the media. When participating states fail to live up to the commitments they have made to this body, it should concern us all, and thus, as Mr. Duve has just mentioned, we too are concerned by the rapid deterioration of media freedom in Belarus. We urge the Belarusian government to make public a draft media law and to facilitate its public debate. It is very much in Belarus' interest to abandon the dangerous path of isolation on which it has embarked and to begin fulfilling its OSCE commitments.

We also share Mr. Duve's concerns about the other countries he discusses in his written report. Here, in the interests of time, I will just highlight one, since it arose this morning. I am referring, of course, to Azerbaijan, which is in a crucial pre-election period. In this regard, I want to say we welcome the announcement made by the distinguished Ambassador of Azerbaijan. We are particularly concerned by the recent harassment against members of its independent media, harassment not only noted by Mr. Duve but also by the OSCE head of mission and the non-profit organization Internews. We urge the Government of Azerbaijan to show restraint, and to respect the role of the independent media both generally and particularly in this election period.

Thank you, Mr. Chairman.